



CALIFORNIA PUBLIC UTILITIES COMMISSION

BILL ANALYSIS

BILL SUMMARY

AB 2754 (Nation) California Public Utilities Commission: civil fines and penalties.
As Introduced 2/25/02

Recommendation: Oppose

Summary: This bill adds Sections 2120 and 2121 to the Enforcement Section of the Public Utilities Act, relating to civil fines and penalties imposed by the California Public Utilities Commission (Commission).

Analysis: Existing law authorizes the Commission to use a variety of methods of imposing sanctions on utilities that violates the provisions of the Public Utilities Act of an order of the Commission. These include criminal prosecution (PU Code section 2110, 2112), seeking an injunction or other civil remedy (PU Code section 2102, 2106), contempt enforceable by a court (PU Code section 2113) and imposing fines and penalties (PU Code sections 2107, 2108, 2111) enforceable through the courts (PU Code section 2104). Fines and penalties are imposed in the name of the People of California and are deposited in the State Treasury. PU Code section 2104.

This bill establishes restrictive procedural requirements for cases involving a civil fine or penalty (Section 2, adding Public Utilities Code 2121) and, in any case involving a civil fine or penalty of over one million dollars (\$1,000,000) requires a hearing before a majority of the commissioners and an opportunity for parties to present their cases personally to each commissioner (Section 1, adding PU Code section 2120.)

Proposed Section 2121 requires that the Commission in any civil penalty case:

- 1) Be limited to the fine or penalty "...for which the Commission provided notice prior to the commencement of the hearing...."
- 2) Make specific findings based on a preponderance of the evidence concerning: a) severity of harm; (b) mitigating actions taken by the public utility; (c) the public utility's financial resources; (d) the totality of the circumstances and furtherance of the public interest "; (e) "the nature of penalties assessed in prior Commission decisions for similar violations;"
- 3) Make a "clear and convincing evidence" showing to justify any "substantial departure" from fines or penalties imposed in previous decisions;
- 4) Not use "unsubstantiated hearsay" to prove a violation.

Comments: The creation of formal evidentiary standards coupled with a list of specific required findings establishes a formal trial type process. In large-scale pattern and practice cases, the limitation on "unsubstantiated hearsay" may in practice involve deposing or calling literally thousands of witnesses. The introduction of generic "public interest" issues potentially broadens the scope of the proceeding substantially. Taken as a whole, the process becomes a recipe for gridlocked proceedings of virtually unlimited duration in any significant case.

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BILL LANGUAGE

BILL NUMBER: AB 2754 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Nation

FEBRUARY 25, 2002

An act to add Sections 2120 and 2121 to the Public Utilities Code,
relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2754, as introduced, Nation. Public Utilities Commission:
civil fines and penalties.

Under existing law, the Public Utilities Commission is authorized
to impose civil fines and penalties on public utilities for failing
to comply with commission orders, the state constitution, and other
state laws.

This bill would require the commission to hold a hearing with a
majority of the commissioners present whenever the commission
anticipates imposing a civil fine or penalty in excess of \$1,000,000.

The bill would also prohibit the commission from imposing any civil
fine or penalty for which the commission did not provide notice
prior to the commencement of the hearing during which the fine or
penalty is being imposed. The bill would also require the
commission, prior to imposing any civil fine or penalty, to make a
finding that the fine or penalty is justified by a preponderance of
the evidence after making specific findings with regard to the
severity of the economic or physical harm, actions taken by the
public utility to prevent, detect, disclose, and rectify the
violation, the public utility's financial resources, the totality of
the circumstances in furtherance of the public interest, and the
nature of penalties assessed in prior commission decisions for

Departments That May Be Affected		
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment	<input type="checkbox"/> Legislative Appointment
<input type="checkbox"/> State Mandate	<input type="checkbox"/> Urgency Clause	<input type="checkbox"/> Regulations Required
		<input type="checkbox"/> Legislative Report
Board Position <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> Defer to: <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA	Agency Secretary Position <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> Defer to: <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA	Governor Office Use Only _____ Position Approved _____ Position Disapproved _____ Position Noted _____ No Position
Director Date	Agency Secretary Date	By Date

similar violations. The bill would also require the commission to rely upon prior decisions of the commission in similar circumstances when imposing the fine or penalty. The bill would require the commission to find clear and convincing evidence of specific aggravating circumstances or egregious conduct prior to deviating from prior commission decisions. The bill would prohibit the commission from relying upon unsubstantiated hearsay alone to impose the fine or penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2120 is added to the Public Utilities Code, to read:

2120. Whenever the commission anticipates imposing a civil fine or penalty in excess of one million dollars (\$1,000,000), the commission shall hold a hearing to provide each party an opportunity to be heard in which no less than a majority of the commissioners are present. Any commissioner that does not attend the hearing shall attend a meeting of the parties to allow each party an opportunity to present its case.

SEC. 2. Section 2121 is added to the Public Utilities Code, to read:

2121. (a) The commission, when imposing any civil fine or penalty, is limited to any fine or penalty for which the commission provided notice prior to the commencement of the hearing during which the fine or penalty is being imposed.

(b) Prior to imposing any civil fine or penalty, the commission shall make a finding that the fine or penalty is justified by a preponderance of the evidence after making specific findings with regard to each of the following:

- (1) The severity of the economic or physical harm.
- (2) Any actions taken by the public utility to prevent, detect, disclose, and rectify the violation.
- (3) The public utility's financial resources.
- (4) The totality of the circumstances in furtherance of the public interest.
- (5) The nature of penalties assessed in prior commission decisions for similar violations.

(c) Whenever the commission imposes any civil fine or penalty, the commission shall rely upon prior decisions of the commission in similar circumstances. Any civil fine or penalty imposed by the commission may not substantially depart from fines or penalties imposed in previous decisions based on similarly situated parties, unless the commission finds clear and convincing evidence of specific aggravating circumstances or egregious conduct.

(e) In determining the amount of any fine or penalty, the commission may not rely upon unsubstantiated hearsay alone to prove a violation.